IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8465 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SURENDRANAGAR DUDHREJ MUNICIPALITY

Versus

DHIRABHAI NAGJIBHAI

Appearance:

1. Special Civil Application No. 8465 of 2003

MR DA SURANI for Petitioner No. 1

MR RD RAVAL for Respondent No. 1

RULE SERVED for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 22/07/2004

ORAL JUDGEMENT

1.0 The petitioner herein has challenged the order of

the Labour Court, Surendranagar, dated 08/10/02 in Reference (LCS) No.190/1992 (Annexure 'A'), whereby the Labour Court had directed the petitioner Municipality to reinstate the respondent with continuity of service and back wages.

2.0 The case of the petitioner Municipality is that the respondent workman was appointed as a Safai Kamdar (Cleaner) on temporary basis and had worked there for only about one week in a month. Another employee of the petitioner Municipality had preferred a Reference before the Industrial Tribunal, Rajkot, by which the Tribunal had directed the petitioner Municipality to make a seniority list of the Safai Kamdars. As per the said direction of the Tribunal, the petitioner Municipality prepared the seniority list of Cleaners in which the name of the present respondent was not included as he was appointed on temporary basis. The present respondent being aggrieved by the said seniority list preferred Reference before the Labour Court, Surendranagar, being Reference (LCS) No.190/1992 which came to be allowed by order dated 08/10/02. Hence, this petition.

3.0 Mr.D A Surani learned advocate for the petitioner has submitted that the respondent was a daily wager and was appointed only for a temporary period. He has further submitted that being a daily wager his services were liable to be terminated at any time. Therefore, the Labour Court by directing the petitioner Municipality to reinstate the present respondent with back wages has committed an error of law and therefore its Award is required to be quashed and set aside.

3.1 Mr.Surani for the petitioner had relied upon a Division Bench judgment of this Court in the case of Halvad Nagarpalika & Ors. v. Jani Dipakbhai Chandravadanbhai & Ors. reported in (2003) 2 G.H.J. 397, wherein it has been held that if the appointments are made without following any legal procedure or statutory or recruitment policy, then in that event, it is not material whether they have completed the service of 240 days in a year or not. It was further held therein that in view of the judgment of the Hon'ble the Supreme Court, the provision of Sec.25-F cannot be invoked in the case of daily waged employees whose appointments are without following the due procedure laid down in the statutory rules or recruitment policies. The order passed by the Ld.Single Judge was therefore quashed and set aside.

3.2 Mr.Surani for the petitioner has also relied upon

the Full Bench judgment of this Court in Special Civil Application No.5746 of 1999 dated 09/07/04. The observations made in para 12.1.13 of the aforesaid decision are relevant. It reads as under;

"Even if it is held that the Labour Court / Industrial Tribunal has wide jurisdiction to alter service conditions, it can exercise such powers subject to the recruitment rules, availability of sanctioned posts and subject to the grant and limits of budgetary provisions. When there is no permanent post, no direction can be given to the authorities to absorb daily wage employees by creating new posts. It is the common phenomenon in the case of Nagarpalikas / Municipalities / Government Corporations where such appointments are made on political considerations. The parties in power may recruit their own persons as daily rated employees and thereafter by seeking orders from the Court, they want to absorb such employees on permanent establishment. Time and again, such practice is deprecated in so many words in the judgment referred by us. The Panchayats, Municipalities, Municipal Corporation or Government Corporations as well as Government establishments are facing severe financial crisis only because of such staff which may be required for the time being, but to make them permanent would definitely adversely affect the financial substratum of respective organizations and the Courts should not be party to such illegal and irregular appointments by allowing them to be continued at the cost of public exchequer. We are conscious of the fact that by not approving the appointments of such daily wagers, it will be very difficult for them to survive and the question of their livelihood would arise. Keeping this aspect in mind, we do feel that in appropriate cases, their interests are required to be protected. We accordingly give following guidelines:-

(1) If casual workers or daily rated workers are not required by the Local bodies and whose services are likely to be terminated, they should be relieved on the principle of "last come, first go". In the event of filling up the posts in future, those who are eligible and

qualified from and amongst the relieved workmen shall be preferred by waiving the age limit.

(2) If the workman who have continued for years as temporary employee, in the event of their termination, the authorities will see that no unqualified person is appointed in their place.

(3) The question of regularization can also be considered by the authorities before terminating services provided the workers are eligible on the sanctioned posts.

(4) If the posts are not sanctioned, the authorities may take such steps which are necessary in accordance with the provisions of law / rules / circulars within the budgetary provisions."

5.0 I have heard the learned advocates for the parties and have gone through the averments made in the petition. In view of the observations made in the aforesaid two decisions of this Court, the Labour Court, Surendranagar has committed an error by directing the petitioner Municipality to reinstate the respondent workman with continuity of service and with back wages as the respondent had not completed 240 days of service in a year. Moreover, the Labour Court had not given any findings to that effect also. The respondent workman had not given any termination date and had also not made any averment regarding his completion of 240 days of service in a year. Therefore, the order of the Labour Court is illegal and is required to be quashed and set aside.

6.0 For the foregoing reasons, this petition is allowed. The impugned order of the Labour Court, Surendranagar dated 08/10/02 passed in Reference (LCS) No.190/1992 at Annexure 'A' to the petition, is quashed and set aside. Rule is made absolute to the aforesaid extent with no orders as to costs.

(K. S. Jhaveri, J.)

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